

Statement of Javier Soto
Before the House Committee on Veterans' Affairs
July 14, 2014

I, Javier Soto, thank the Chairman, and esteemed members of the House Veterans Affairs Committee, for the invitation to participate in this process and state:

- The pressure to focus on production and compete cases has resulted in less attention on quality to meet “numbers” goals
- Various changes, like “changing the game,” and “provisional ratings,” seem to shift the burden to the veteran to prove the claim, or hide claim processing times, and may violate certain goals of the duty to assist (38 USC 5103A)
- While quality control methods are touted nationally as the measure of overall claims processing quality, local internal employee quality reviews show high error rates locally, and disagreements on what is a quality error and how to evaluate evidence
- In order to move cases faster, it seems the focus is on less time for Veterans to submit evidence or for VA to obtain it, to close the record faster, with the observation that there may be an increase in denial of claims at my former office as a result

1. My statement is derived from experiences as a “rater” or Rating Veterans Service Representative while employed at the Veterans Benefits Administration, St. Petersburg VA Regional Office (“RO317”), where in four years I was promoted from GS-9 to GS-12, and received at least fully successful ratings.

2. I was hired to work on a Night Shift. We were promised verbally, by Kerrie Witty, Director of RO317, and Mr. Scott Posti, Assistant Director, RO317 (at the time), that Night Shift would never go away as this program was meant to meet the goals of ending the backlog. Less than a year later, Night Shift went away. Further, about 60% of hires on the night shift rater class are no longer raters or employed as raters.

3. It is my observation VA has steadily shortened evidence wait periods for various evidentiary items – private medical record requests, duty to assist time periods, research for certain other records, and so on. The result is usually a small window to get evidence “on the record” for consideration for the claim made. When the evidence submission window closes, the claim is rated based on the evidence of record. As a consequence, a denial for benefits results if no evidence arrived during the new shortened period of time.

4. There have been times at the Orlando office when managers will tell raters how to rate a claim (mostly urging closure without further review of issues that may need more review) but refusing to follow written procedure that would alert the Veteran of a difference in opinion as to how to develop or evaluate a claim. VA rules call for differences in opinions between management and a rater to be documented in a written memorandum. Management has refused to comply with such requests by employees.

5. RO317 management developed mitigation to the national 2013 standards that I could not find approval for from VA Central Office. Employees at the lowest levels (not meeting standards) were declared fully successful based on “unique station challenges,” or similar statements. Later, I learned the HR manager, Bonnie Wax, directed the use of this terminology

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(while engaged in helping one employee on a performance issue at Orlando – when the Orlando office manager passed the employee based on unique station challenges - “as instructed” by “HR”). Also, this term appears to be used to “assign” certain employees as ‘outstanding’ without those employees meeting the outstanding criteria. An additional concern was that employees that did meet production and accuracy requirements received no upward mitigation (the “middle” group) despite an appearance of a “curve” for the standards at the high end and low end (those that managed to meet standards were lumped in with poor performers). On some occasions, to avoid litigating training issues a “unique station challenge” was declared and the employee made fully successful, when the employee filed EEO or other complaints.

6. Accuracy figures differ between RO317, STAR (National), OIG, and so on. At RO317, individual quality reviews (that evaluate employee performance on claims – not station performance that is reviewed by STAR) seem subjective or based on preference of the reviewer. Accuracy impacts production because it is used punitively against employees. Because of confusion over accuracy demands by the local quality review team, some employees report shifting rating practices to accommodate reviewer “preference,” not law.

7. Employees have reported to AFGE comments by managers of “let the Veteran appeal” or “that’s what appeals are for” when questioning claims processing concerns.

8. We can’t agree when raters and quality reviewers view the same evidence and differ as to what it means. VA law calls for one standard of review, but quality reviewers show no consistent standard locally, making it difficult to pinpoint a fix, and causing errors in rating claims. For example, consider the following sample of errors made by “quality” reviewers:

a. Three errors were called by the local quality reviewers (QR) when I granted the earliest possible increase effective date on a claim (based on VA medical records). QR ignored my clear explanation that I relied on VA records and stated “private records were too old.” When the QR would not change their decision, which would have denied the Veteran thousands of dollars, the matter was challenged in various labor forums because VA would not consider it. Many months later the director finally relented and overturned the error – but refused to admit problems with the quality review process, and refused to issue guidance to QR that would avoid similar error calls in the future.

b. An error was called when QR decided the word “and” means “or” in manual reference concerning who is covered for purposes of “Agent Orange” claims in locations other than Vietnam. The rater noted that the “manual” (M21-1MR) states Veterans that meet two criteria (i.e., “x” AND “y”) are to be referred for further review. The QR panel advised the argument “AND” means “AND” – was not persuasive. On further challenge, management relented and stated: “in fairness, if QRT finds it necessary to clarify this particular reference with Compensation Service, then [employee name omitted] should not be charged with this error.” However, they denied a request to prevent such errors in the future.

c. In early FY2104 four quality review errors were called on raters at the Orlando Office of RO317 based “interpretation” of medical evidence. Raters at the Orlando

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1 office resubmitted the claims to VHA for clarification. VHA noted the raters were correct. The
2 errors were reported to the director of RO317. Veterans Services Center Manager Sandra Smith
3 has not answered calls for resolving the matter, and Director Kerrie Witty has refused to address
4 this matter. The claims sit unaddressed as to the error concerns.

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7 9. During the focus on initial claims, RO317 reported that appeals at RO317 had increased
8 beyond the rate experienced at other offices. Also, other concerns have arisen. Some non-
9 bundled claims sat ignored for the most part, resulting in losses to VA (i.e., grants requiring
10 future exams in 6 months have gone without an exam for five years in some cases, resulting in
11 extra payments not justified by law).

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13 10. Review of internal quality review team "minutes" shows: They have had problems
14 agreeing on what a local error is or should be; They feel caught between employees and
15 management over the processing goals; and, quality reviews are time consuming for VBMS
16 claims nation-wide. I could find no management address of these concerns.

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18 11. RO317 has stated internally that its quality review team is 100 percent accurate after
19 complaints about mistakes by the quality review team. An Email to RO317 employees on
20 January 27, 2014, urged employees to stop complaining to quality reviewers. Later, during this
21 year, quality reviewers began using "**disclaimers**" for guidance given by quality reviewers due
22 to their decisions being challenged as inconsistent. This matter was brought to the attention of
23 the RO director in a recent "town hall meeting" with employees and she responded with "I am
24 not aware," "I have to check into that," "I don't know."

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26 12. The matter of quality and production has increased hostility in the workplace for all -
27 employees, quality reviewers, and middle managers. Senior management has received bad
28 reviews from employees in employee surveys. While management refuses to admit the problems
29 continue, or exist, recent emails exemplify the conflicting quality process: An employee asked
30 for guidance on whether to order an exam based on a Veteran submitted claim and evidence. Due
31 to a fluke, two quality reviewers responded via email to the same question minutes apart (the
32 question was entered into a "request for help" database). They issued opposing guidance to the
33 employee (one said order the exam, the other said do not order the exam).

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35 13. "Changing the Game" rules have resulted in exams denied to veterans during increase
36 claims by pressure to rate on available evidence that may not meet legal requirements. As an
37 example of the conflict here, various increase claims were completed using Changing the Game,
38 under insistence of the Orlando Area Manager, without exams. The rater complying received
39 various errors for not ordering exams.

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41 14. A great concern in training and development of raters is that claims are not assigned for
42 processing based on complexity of claim and tenure and experience of the employee. Tied to the
43 push for "production," is a disregard for position description procedural guidance for new raters.
44 This leads to needless quality issues and delays in claims processing.

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15. We receive exams from VHA not properly filled out, missing medical opinions, with conflicting opinions and diagnosis, and incomplete. WE complained to our managers but get no address to this problem. We also receive complaints from Veterans on being evaluated for complex conditions in "five minutes." Exams are a critical part of the rating process.

16. A concern for fraud has arisen in e-benefits initiatives. At the Orlando Office of RO317, a script for convalescence was altered to increase 100 percent benefits for over 4 months from the 2 weeks called for by the doctor. The rater reported the matter to the management at Orlando Office of RO317. The reply by management was "*you should have just rated it and closed the claim.*" There has been no training or instruction in identifying medical frauds for raters as we race through claims.

17. Despite congress calling for a time motion study at VBA, I have not seen or heard of one performed for the latest performance standards. I did review data on a previous study (I think over 5 years ago) and those familiar with the study advised that VBA stopped such studies because they did not support the performance standards used by VBA.

19. Provisional ratings simply closed the end product (EP, or claim as "tracked" when initially filed), but resulted in a new "non-bundled" EP being issued to track the provisional rating. The claim continues unaddressed and not is completed. '

20. Because of changes seemingly appearing to conflict training and law, some raters refused to follow the new rules without written directives. The claims were reassigned to others willing to perform them as requested.

Summary

I have the utmost respect for this job and the legal process here. I am also awed by the background and efforts of our Veterans that I have served by deciding claims. I was simply trying to help when after issuing a VSR accuracy report (showing RO317 quality review team was performing poorly, overturning their own decisions about 50% of the time on appeal) of June 24, distributed on June 26, I was involuntarily separated June 30, by Kerrie Witty, Director, because "my services were no longer required" (I was laid off in the middle of a backlog and a push to hire more raters). As a re-employed retiree I was determined to be at will and no longer needed.